

No. 12314

United States
Court of Appeals
For the Ninth Circuit.

MIKE ERCEG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the District Court for the Territory District of
Alaska, Fourth Division

FILED

OCT - 5 1949

PAUL P. O'BRIEN,



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

ROBERT A. PARRISH,
Fairbanks, Alaska,

Attorney for Plaintiff and Appellant.

HARRY O. AREND,
United States Attorney,
Fairbanks, Alaska,

Attorney for Defendant and Appellee.

In the District Court for the Fourth Division
Territory of Alaska

No. 6143

MIKE ERCEG,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Comes Now the Plaintiff above named and for cause of action against the above-named Defendant, complains and alleges as follows:

I.

That the above-named Plaintiff presents this, his petition, against the United States of America, Defendant, pursuant to the provisions of Title 41, Section 113-(b) of the United States Code, in accordance with the provisions of Title 28, Section 41, Subsection 20 and as provided by the Judicial Code effective September 1, 1948, Title 28, Section 1346, Subdivision 2, United States Code.

II.

That on the 17th day of July, 1942, the Defendant did operate and was in the process of constructing an Air Base at Big Delta, Alaska, and was in the process of drilling certain water wells at the said base.

III.

That the Plaintiff above named was in the business of operating drilling equipment suitable for the drilling of water wells on the said date, and did own certain drilling equipment hereinafter described, and did reside at Fairbanks, Alaska.

IV.

That on the 17th day of July, 1942, the Plaintiff, and the Defendant by and through its agent, Sidney F. Tate, Jr., acting in the capacity of Resident Engineer, United States War Department, Big Delta, Alaska, made and entered into a contract whereby the Plaintiff agreed to rent unto the Defendant one Keystone Drill #70, with accessory equipment, to be used by the Defendant at Big Delta, Alaska, for the purpose of drilling water wells, and Defendant to pay unto the Plaintiff daily rental of Thirty (\$30.00) Dollars per day, or Nine Hundred (\$900.00) Dollars per month; a copy of said contract being attached hereto and made a part hereof as if incorporated herein, and is marked "Exhibit A." That Plaintiff relies in whole or in part in establishing his cause of action upon the said written contract.

V.

That the Plaintiff has complied with all of his obligations arising under said contract and that the said Defendant did use the said equipment from the 17th day of July, 1942, to the 1st day of December, 1942, in the amount of One Hundred and

Thirty-Four days, making a total amount of rental due to the Plaintiff from the Defendant to be the sum of Four Thousand and Twenty Dollars (\$4,020.00).

VI.

That although demand has been made of the Defendant by the Plaintiff for the said sum of \$4,020.00, the Defendant has administratively denied liability thereof on or about the 22nd day of January, 1949, and has failed and refused to pay the same and the said sum is due and owing to the Plaintiff with interest thereon at the rate of six (6%) per cent per annum from the 1st day of December, 1942.

VII.

That the Plaintiff has been compelled to employ an attorney to prosecute the said action and is entitled thereby to recover a reasonable fee for his attorney, and his costs and disbursements herein expended.

Wherefore, the Plaintiff prays judgment for the sum of Four Thousand and Twenty Dollars (\$4,020.00) with interest thereon at the rate of six (6%) per cent per annum from the 1st day of December, 1942, until paid and for a reasonable fee for his attorney, and his costs and disbursements expended herein.

/s/ ROBERT A. PARRISH,
Attorney for Plaintiff.

United States of America,
Territory of Alaska—ss.

Mike Erceg, being first duly sworn, upon his oath, deposes and says: I am the Plaintiff in the above-entitled action; that I have read the allegations of the Complaint, know the contents thereof, and that the same are true as I verily believe.

/s/ MIKE ERCEG.

Subscribed and sworn to before me this 20th day of April, 1949.

[Seal] /s/ ROBERT A. PARRISH,
Notary Public in and for the Territory of Alaska.
My Commission expires: 2/9/52. [3*]

EXHIBIT A

Agreement

This Agreement, Made and entered into this 16th day of July, 1942, by and between Mike Erceg, of Fairbanks, Alaska, party of the first part, and the Resident Engineer, United States War Department, Big Delta, Alaska, party of the second part,

Witnesseth:

That said party of the first part agrees to rent to said party of the second, and said party of the second part agrees to rent from said party of the first part one Keystone Drill #70, together with all tools, accessory equipment, and parts as described

* Page numbering appearing at bottom of page of original certified Transcript of Record.

in the inventory attached hereto and made a part hereof, to be used by party of the second part for drilling water wells at Big Delta, Alaska, for the term from the 17th day of July, 1942, until all wells at said Big Delta, Alaska, are completed.

Said party of the first part agrees to deliver said drill, tools, equipment, and parts in good condition at Big Delta ready for immediate operation.

Said party of the second part agrees to pay as rental for said drill, tools, equipment, and parts, the sum of Thirty Dollars (\$30.00) per day, or Nine Hundred Dollars (\$900.00) per month, to said party of the first part, and further agrees to operate said drill continuously, unless temporarily delayed by accidental breakage.

That all expense of operation of said drill, and all costs of repair and upkeep of same, or of any of the parts or accessories, including cable, shall be borne by said party of the second part; and said party of the second part agrees to keep said drill, equipment, and parts, in first-class workable condition at all times.

That when all work is completed under this agreement, said party of the second part agrees to deliver to said Mike Erceg, at his [4] yard at Fairbanks, Alaska, at the cost of party of the second part, said drill, with all tools, equipment, and parts in as good condition as the same are now in, reasonable wear and tear excepted, with all breakage, if any, repaired or replaced; but in the event that it is impossible to replace any breakage, said party of the

second part agrees to reimburse party of the first part for same.

Said party of the first part further agrees to loan to said party of the second part two hundred fifteen (215) feet of six-inch casing, X-heavy, to be used by party of the second part in connection with said drilling, and said party of the second part agrees to return the same to said party of the first part at his yard at Fairbanks, Alaska, at the time of delivering said drill; and said party of the second part agrees that in the event of breaking, damaging, or losing said casing, the same will be replaced or repaired at the expense of said party of the second part, or said party of the first part will be reimbursed in full.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written herein.

/s/ MIKE ERCEG,

Party of the First Part.

/s/ SIDNEY F. TATE, JR.,

Title: Resident Engineer. [5]

Drill & Equipment Rented From Mike Erceg,
Fairbanks, Per Agreement Effective 7/17/42

Items

1 Keystone Drill

425' $\frac{3}{8}$ Cable sand line

1 5 Gal. gas can

1 Steam boiler injector

- 1 4' Smokestack
- 1 Screw jack No. 11
- 1 Bar, crow, pinch point 58"
- 6 50 gallon Drums
- 2 1½ 50 gallon drum
- 1 Steam gauge
- 1 Boiler glass
- 7 Globe valves, 5½", 1¼", 1-1"
- 1 Pop-off valve
- 4 6" Drill bits
- 1 Rope socket
- 1 Casing ring
- 1 Anvil & block
- 1 Blacksmith forge with pipe
- 1 Drill, stem, 10'
- 1 Pr. Drilling jars
- 1 Fishing jar
- 1 Drill stem 6' 6½"
- 1 6" Casing puller
- 2 Tool wrenches for 3"
- 1 Johnson bar
- 3 Chain tongs
- 1 Set driving clamps
- 1 Driving head
- 2 Clamp wrenches
- 1 Sand pump 5"—8' long

- 1 Sand pump 7' x 1½"
- 1 Screw jack, no. 2 x 14
- 1 Casing clamp
- 1 Hose 5⁄8", Approx. 37", high pressure
- 1 5⁄8" Chain, 13' long
- 1 1½" Chain, 5' long
- 1 3⁄8" Chain, 6' long
- 1 Length 1½" Cable, Approx. 60' long
- 2 Blocks, wood, 6" x 12" x 4'
- 2 Pcs. wood, 7" x 12" x 8'
- 2 Pcs. wood, 9" x 11" x 5'
- 1 Set cyclone differential hoist, 6 tons
- 1 1⁄4" screen gold pan
- 1 Gold pan
- 1 Gallows frame for chain hoist
- 1 36" Stilson wrench
- 1 Strap 1" cable for gallows frame
- 6 Casing ring wedges 6"
- 2 Pcs. 2" x 6" x 14'
- 400' 3⁄4" Steel cable with rope socket
- 6 Pcs. 8" x 8" x 2'
- 1 Step jack
- 1 Boiler suction hose with screen & 1½" valve
- 1 Tool bumper

- 2 Steam casing jacks
- 2 Jack plates
- 1 Pump, steam for jacks
- 1 Lubricator for steam pump
- 1 Casing ring
- 4 4" Casing ring wedges
- 7 Rubber connecting hose with union for connections between diesel jacks
- 1 Pump wrench, $3\frac{3}{4}$ " x 11" long
- 1 Union wrench (handle broken)
- 1 Extra union for diesel jack hose
- 1 $\frac{3}{8}$ " pipe union
- 1 Length of $\frac{3}{4}$ " pipe 8' long with $\frac{3}{4}$ " globe valve
- 1 3 way valve
- 2 Jack shoes with boots
- 1 Steel plate
- 1 Steel plate
- 60 " No. 1 6" Super X Casing
- 60 " No. 2 6" Super X Casing
- 52 $\frac{3}{4}$ " No. 3 6" Super X Casing
- 59 " No. 4 6" Super X Casing
- 57 $\frac{1}{4}$ " No. 5 6" Super X Casing
- 56 $\frac{1}{4}$ " No. 6 6" Super X Casing
- 60 " No. 7 6" Super X Casing
- 60 " No. 8 6" Super X Casing

59 $\frac{1}{2}$ "	No. 9	6"	Super X	Casing
58 $\frac{1}{2}$ "	No. 10	6"	Super X	Casing
56 $\frac{3}{8}$ "	No. 11	6"	Super X	Casing
51 $\frac{3}{4}$ "	No. 12	6"	Super X	Casing
60 "	No. 13	6"	Super X	Casing
59 "	No. 14	6"	Super X	Casing
60 "	No. 15	6"	Super X	Casing
48 $\frac{1}{4}$ "	No. 16	6"	Super X	Casing
60 "	No. 17	6"	Super X	Casing
60 $\frac{1}{4}$ "	No. 18	6"	Super X	Casing
53 $\frac{1}{2}$ "	No. 19	6"	Super X	Casing
60 "	No. 20	6"	Super X	Casing
52 $\frac{1}{4}$ "	No. 21	6"	Super X	Casing
60 "	No. 22	6"	Super X	Casing
60 "	No. 23	6"	Super X	Casing
58 $\frac{3}{4}$ "	No. 24	6"	Super X	Casing
60 "	No. 25	6"	Super X	Casing
58 $\frac{5}{8}$ "	No. 26	6"	Super X	Casing
59 "	No. 27	6"	Super X	Casing
60 $\frac{1}{4}$ "	No. 28	6"	Super X	Casing
60 "	No. 29	6"	Super X	Casing
59 $\frac{1}{4}$ "	No. 30	6"	Super X	Casing
60 $\frac{1}{8}$ "	No. 31	6"	Super X	Casing
59 "	No. 32	6"	Super X	Casing
60 "	No. 33	6"	Super X	Casing

- 60 " No. 34 6" Super X Casing
- 60 " No. 35 6" Super X Casing
- 60 " No. 36 6" Super X Casing
- 58 $\frac{3}{4}$ " No. 37 6" Super X Casing
- 60 " No. 38 6" Super X Casing
- 60 " No. 39 6" Super X Casing
- 60 " No. 40 6" Super X Casing
- 60 " No. 41 6" Super X Casing
- 60 $\frac{1}{8}$ " No. 42 6" Super X Casing
- 60 " No. 43 6" Super X Casing
- 60 " No. 44 6" Super X Casing
- 60 " No. 45 6" Super X Casing
- 60 " No. 46 6" Super X Casing
- 59 " No. 47 6" Super X Casing
- 72 " No. 48 6" Super X Casing
- 60 " No. 49 6" Super X Casing
- 56 $\frac{1}{4}$ " No. 51 6" Super X Casing
- 60 " No. 50 6" Super X Casing
- 1 6" Steelshoe [6]

Drill & Equipment Rented From Mike Erceg
Fairbanks, Per Agreement, Effective 7/17/42

Inventory Tool Box

- 11 Wrenches—S Types, Double End
- 2 Wrenches—Stillson 14" & 18"
- 1 Bar Chisel 20"

- 2 Crescent wrenches 10" & 8"
- 1 Wrench, monkey
- 2 Chisels
- 2 Punches, square drift
- 1 Punch, round drift
- 1 Pr. Tin snips
- 1 Bit brace
- 1 Screw driver 16"
- 1 Chisel, cold cut blacksmith
- 1 Hammer, blacksmith
- 1 File, round 16"
- 1 File, round 11"
- 1 File, flat 14"
- 2 Files, flat 12"
- 1 File, half round 11"
- 1 File, flat, 8"
- 1 File, 3 corner 8"
- 1 File, 8"—Knife type
- 1 Babbitt ladle
- 1 Chisel, Blacksmith w/o handle
- 1 Chisel, wood 1" (New)
- 1 Hacksaw with blade
- 2 Hose clamps, 1 large, 1 small
- 4 Sand pump gaskets
- 2 Guns, grease

- 1 Brush, steel
- 1 Brush, wood handle
- 2 Belts, Fan motor
- 4 Links, Drill chain No. 470
- 3 Springs for Jack Motor
- 3 Clevis clamps
- 1 Tape, Lufkin, 75'
- 1 Clamp cable
- 2 lbs. Babbitt
- 4 Bits, wood
- 1 Link, connecting No. 133
- 3 Wrenches, set screw
- 1 Gas faucet $\frac{3}{4}$ "
- 9 Bolts, cap screw $\frac{3}{8}$ " x 1"
- 3 Bolts, cap screw $\frac{3}{16}$ " x 1"
- 5 Bolts, stove, 1"
- 12 Lock washers, $\frac{1}{4}$ "
- 5 Spring washers, $\frac{1}{4}$ "
- 2 Spring washers, $\frac{3}{8}$ "
- 21 Spring washers, $\frac{1}{2}$ "
- 2 Flat washers, $\frac{1}{2}$ "
- 14 Spring washers, $\frac{5}{8}$ "
- 12 Flat washers, $\frac{5}{8}$ "
- 9 Washer springs, $\frac{3}{4}$ "
- 6 Washers, flat $\frac{3}{4}$ "

- 4 Washers, flat 1"
- 25 Nuts, $\frac{1}{2}$ " mixed
- 30 Nuts, $\frac{3}{8}$ " mixed
- 2 Nuts, $\frac{5}{8}$ " mixed
- 1 Washer spring $1\frac{1}{2}$ "
- 3 Blades, Hacksaw 10"
- 1 Blade, Hacksaw 12"
- 10 Bolts, $\frac{3}{8}$ "
- 8 Bolts, $\frac{7}{16}$ " x 2"
- 4 Bolts, $\frac{1}{2}$ " x 5"
- 3 Bolts, $\frac{1}{2}$ " x 1"
- 3 Bolts, $\frac{1}{2}$ " x 2"
- 6 Bolts, Octagon $\frac{1}{2}$ " x 2"
- 6 Bolts, $\frac{5}{8}$ " x 2"
- 1 Bolt, $\frac{1}{2}$ " x 1"
- 1 Wrench socket, Friction
- 2 Bolts, $\frac{1}{2}$ " x 12"
- 4 Bolts, $\frac{1}{2}$ " x 4"
- 14 Bolts, $\frac{5}{8}$ " x 4"
- 3 Bolts, Galv. $\frac{3}{8}$ " x 14"
- 5 Bolts, $\frac{3}{4}$ " x 14"
- 4 Bolts, $\frac{3}{4}$ " x $4\frac{1}{2}$ "
- 3 Bolts, $\frac{3}{4}$ " x 3"
- 1 Bolt, $\frac{3}{4}$ " x $2\frac{1}{2}$ "
- 1 Bolt, $\frac{1}{2}$ " x 6"

- 2 Bolts, $\frac{1}{2}$ " x $\frac{1}{2}$ "
- 20 Nuts, $\frac{5}{8}$ "
- 1 Poker, Blacksmith $\frac{1}{2}$ " x 3'
- 1 Wrench, Pitman
- 2 Nuts, $\frac{3}{4}$ "
- 1 Bolt, $\frac{3}{4}$ "
- 11 Links, chain
- 3 Cast washers
- 1 Hammer, claw
- 1 Lead strip, 11" x 3"
- 1 Chain tongs 25"
- 1 Tape, tire $\frac{1}{2}$ roll
- 1 Steel piece, $3\frac{3}{4}$ " x $7\frac{1}{16}$ "
- 1 Can, oil, copper
- 1 Bar, Jads, 14"
- 1 Level, steel
- 400' Cable $\frac{5}{8}$ "
- 100' Cable $\frac{1}{4}$ "
- 1 Sledge, 12 lbs.
- 1 Pr. Pliers, Lineman
- 15' Cable $\frac{1}{2}$ " [7]
- No. 70: 1 Keystone drill, steel welded
gasoline motor.....\$4,500.00
- 1 Rope socket..... 75.50

United States of America

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1	Drill Stem.....	115.00
1	Sinking Bar.....	77.25
3	Drill Bits.....	225.00
1	Drill Jars.....	112.50
1	5" x 8 ft. long, sand pump....	75.00
2	Tool Wrenches.....	84.00
1	Set Drive Clamps.....	57.50
2	Clamp Wrenches.....	22.50
1	Casing Clamp.....	16.50
1	Tool Wrench Tightening Bar with Chains (Chain Wrench Bar)	15.50
1	Pipe Pulling Ring with Wedges	122.50
1	Lifting Jack.....	40.50
2	2½" x 14 Screw Jacks (2 Ft. over-all)	16.80
1	Bit Gauge.....	3.55
1	400 Ft. ¾" L. Steel Cable....	144.00
1	400 Ft. ⅝" L. Cable.....	120.00
1	300 Ft. ⅜" Steel Sand Line Cable	42.00
2	Vulcan Pipe Wrenches, #34.	44.00

Total\$5,909.60

/s/ HOWARD H. MILLER.

[Endorsed]: Filed April 21, 1949. [8]

[Title of District Court and Cause.]

SUMMONS

The President of the United States of America,
Greeting:

To the Above Named Defendant..

You Are Hereby Required to appear in the District Court for the Territory of Alaska, Fourth Division, within thirty days after the day of service of this summons upon you, and answer the complaint of the above named plaintiff.., a copy of which is herewith delivered to you; and unless you so appear and answer, the plaintiff.. will take judgment against you as demanded in said complaint, to wit: for the recovery of money and damages arising out of breach of contract in the sum of Four Thousand and Twenty (\$4,020.00) Dollars, together with interest thereon at the rate of six (6%) per annum from the 1st day of December, 1942, and for a reasonable attorney fee and the costs and disbursements expended herein.

Witness, the honorable Harry E. Pratt, Judge of said Court, this 21st day of April in the year of our Lord one thousand nine hundred and forty nine.

[Seal] /s/ JOHN B. HALL,
Clerk,

By /s/ OLGA T. STEGES,
Deputy Clerk. [9]

MARSHAL'S RETURN

United States of America,
Territory of Alaska, Fourth Division—ss.

I Hereby Certify, That I received the foregoing Summons on the 21st day of April, 1949, and that I duly served the same on the therein named defendant.. United States of America by and through Harry O. Arend, United States Attorney at Fairbanks, Alaska, on the 21st day of April 1949, and at....., Alaska, on the..... day of.....194.. by then and there delivering personally to Harry O. Arend, United States Attorney, defendant, a copy of said Summons and a copy of said Complaint, certified to be such copy by the plaintiff's attorney of record and by mailing a copy of said Summons and copy of Complaint certified to be such copy by the plaintiff's attorney of record, via registered mail to the Attorney General as provided by Rule 4(c) and Rule 4(d) (4) Code of Civil Procedure.

Marshal's Fees \$3.00.

STANLEY J. NICHOLS,

U. S. Marshal, Fourth Div.

By STEVEN A. MIKULAS,

Deputy.

Post Office Return Receipt attached.

[Endorsed]: Filed April 28, 1949.

[Title of District Court and Cause.]

DEMURRER

Comes now the above named defendant and demurs to the complaint on file herein for the following reasons:

1. That the Court has no jurisdiction of the subject matter of the action; and
2. That the action has not been commenced within the time limited by the laws of the Territory of Alaska.

HARRY O. AREND,

U. S. Attorney.

Service acknowledged.

[Endorsed]: Filed May 25, 1949. [10]

[Title of District Court and Cause.]

NOTICE OF HEARING

To: Harry O. Arend, United States District Attorney, Fairbanks, Alaska, Attorney for Defendant.

You are hereby notified that, on the 27th day of May, 1949, at hour of 1:30 p.m., or as soon thereafter as the same can be heard, the issue in the above entitled cause raised by the Demurrer will be brought on for hearing.

Dated this 25th day of May, 1949.

/s/ ROBERT A. PARRISH,
Attorney for Plaintiff.

Service acknowledged.

[Endorsed]: Filed May 25, 1949. [11]

[Title of District Court and Cause.]

ORDER RE DEMURRER

The Court having on May 27, 1949, heard arguments on a Demurrer to the Complaint in this cause and now being fully advised in the premises, it was Ordered that the demurrer be overruled as to the first ground, but sustained on the second ground.

Entered June 6, 1949. [12]

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL

Comes Now, Mike Erceg, the above named Plaintiff, and considering himself aggrieved by the order of the above entitled Court made and entered herein on the 6th day of June, 1949, said order being in favor of the Defendant and against the Plaintiff in the sustaining of the Demurrer of the Defendant that the above action has not been commenced within the time limited by the laws of the Territory of Alaska, and said Plaintiffs having given due Notice of Appeal from said order to the Ninth Circuit Court of Appeals of the United States of America setting in San Francisco, California, for the reasons specified and set forth in the said order of said Court, Assignment of Errors and Notice of Appeal on file herein; does respectfully pray that the said appeal petitioned for herein may be al-

lowed and that a transcript of the records, proceedings and papers upon which said order was entered and made be duly authenticated by the Clerk of the above entitled Court and sent to the Ninth Circuit Court of Appeals of the United States of America, at San Francisco, California; and said Plaintiff does further pray that said order be set aside and reversed, and that the cause be returned to the [13] above entitled Court and that jurisdiction be taken herein and the Demurrer of the Defendant be overruled, and further that the above entitled Court fix the amount of the Appeal Bond to be filed herein.

Dated at Fairbanks, Alaska, this 29th day of June, 1949.

/s/ ROBERT A. PARRISH,
Attorney for Plaintiff.

Service acknowledged.

[Endorsed]: Filed June 29, 1949. [14]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes Now, the Plaintiff above named, Mike Erceg, by and through his attorney, Robert A. Parrish, and for assignment of errors alleges and states:

I.

That the above entitled Court erred in sustaining the Demurrer of the Defendant herein, on the

grounds that the action has not been commenced within the time limited by the laws of the Territory of Alaska.

/s/ ROBERT A. PARRISH,
Attorney for Plaintiff.

Service acknowledged.

[Endorsed]: Filed June 29, 1949. [15]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO NINTH CIRCUIT
COURT OF APPEALS, UNITED STATES
OF AMERICA

Notice is hereby given that the above named Plaintiff, Mike Erceg, hereby appeals to the Ninth Circuit Court of Appeals of the United States of America, from the order of the above entitled Court entered on the sixth day of June, 1949, sustaining the Demurrer of the Defendant in said action, on the grounds that the action has not been commenced within the time limited by the laws of the Territory of Alaska.

/s/ ROBERT A. PARRISH,
Attorney for Plaintiff.

Service acknowledged.

[Endorsed]: Filed June 29, 1949. [16]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF APPEAL BOND

Now on this 2nd day of July, 1949, the same being one of the days of General Term of this Court, this cause came on regularly to be heard upon the Petition of the Plaintiff, Mike Erceg, for the allowance of an appeal on behalf of said Plaintiff from the order entered in said cause on the 6th day of June, 1949, sustaining the Demurrer of the Defendant on the grounds that the action has not been commenced within the time limited by the laws of the Territory of Alaska, therefore,

It Is Hereby Ordered that the appeal of the Plaintiff from the order entered herein on the 6th day of June, 1949, sustaining the Demurrer of the Defendant on the ground that the action has not been commenced within the time limited by the laws of the Territory of Alaska, be, and the same is allowed to the United States Court of Appeals for the Ninth Circuit and that a certified transcript of the record, proceedings, orders, judgment, testimony and all other proceedings in said matter on which said order appealed from is based, be transferred, duly authenticated to the United States Court of Appeals for the Ninth Circuit and therein filed and said cause docketed on or before forty (40) days from this date to be heard at San Francisco, California; and [17]

It Is Further Ordered that the amount of the

Appeal be, and is hereby fixed at the sum of Two Hundred Fifty Dollars (\$250.00).

It Is Further Ordered that the said Plaintiff shall file a bond to be approved by the above entitled Court within five (5) days from the date of this order.

Done in Chambers on this 2nd day of July, 1949.

/s/ HARRY E. PRATT.

Service acknowledged.

Entered July 2, 1949.

[Endorsed]: Filed July 2, 1949. [18]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents:

That I, Mike Erceg, the above named Plaintiff, and August A. Johnson and B. B. Holtrop, as sureties, of Fairbanks, Alaska, are held and firmly bound unto the United States of America, in the sum of Two Hundred Fifty Dollars (\$250.00), lawful money of the United States of America, to be paid to said United States of America, for the payment of which well and truly to be made, we bind ourselves, our successors, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 6th day of July, 1949.

The condition of the above obligation is such that:

Whereas the above bounden Plaintiff has filed his Petition for Appeal and is about to appeal to

the United States Court of appeals for the Ninth Circuit, from that certain order in favor of the above named Defendant, the United States of America, entered in the above entitled Court and cause on the 6th day of June, 1949, and

Whereas said Plaintiff desires to appeal from said order and the whole thereof, to the United States Court of Appeals for the Ninth Circuit to reverse said order and judgment, and has given Defendant [19] in said Action Notice of Appeal as required by law, and said Court having duly fixed the amount of Cost Bond at Two Hundred Fifty Dollars (\$250.00).

Now, Therefore, if Plaintiff above named should prosecute said appeal to effect and answer all costs that may be adjudged against him if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

/s/ MIKE ERCEG,
Plaintiff,

/s/ AUGUST A. JOHNSON,

/s/ B. B. HOLTROP,
Sureties.

United States of America,
Territory of Alaska—ss.

August A. Johnson and B. B. Holtrop each being first duly sworn, upon his oath deposes and says:

That I am a resident of Fairbanks, in the Fourth Judicial Division, Territory of Alaska, that I am not an attorney, Counsel at Law, Judge, Marshal,

Clerk, Commissioner, or other officer of any Court;
that I am worth the sum of Five Hundred Dollars
(\$500.00) over and above all my just debts and
obligations, in property not exempt from execution
situate in the Territory of Alaska.

/s/ AUGUST A. JOHNSON,

/s/ B. B. HOLTROP.

Subscribed and sworn to before me this 6th day
of July, 1949.

/s/MARIE L. ACORD,

Notary Public in and for Alaska.

My Commission Expires 3/18/53.

This above bond approved this 7th day of July,
1949.

/s/ HARRY E. PRATT,

District Judge.

Service acknowledged.

[Endorsed]: Filed July 7, 1949. [20]

[Title of District Court and Cause.]

CITATION OF APPEAL

The President of the United States of America
To the Protestants, United States of America, and
its attorneys, Harry Arend, and the Attorney Gen-
eral of the United States of America.

You are hereby cited to be and appear in the
United States Court of Appeals for the Ninth Cir-
cuit, to be holden in the City of San Francisco,

State of California, within forty days from the date of this Citation, pursuant to an order allowing an appeal, made and entered in the above entitled cause on the 2nd day of July, 1949, in which the Plaintiff is Petitioner and appellant, and the United States of America is appellee, to show cause, if any there be, why the order entered in this cause on the 6th day of June, 1949, in favor of appellee and against appellant herein should not be set aside and reversed, and why speedy justice should not be done to said Petitioner and appellant above named in that behalf.

Witness the Honorable Fred A. Vinson, Chief Justice of the Supreme Court of the United States of America, on this 8th day of July, 1949.

/s/ HARRY E. PRATT,
District Judge.

Service acknowledged.

Entered July 8, 1949.

[Endorsed]: Filed July 8, 1949. [21]

[Title of District Court and Cause.]

ORDER EXTENDING TIME

On the Motion of Robert A. Parrish, counsel for the plaintiff, Harry O. Arend, U. S. Attorney, being present and consenting thereto, it was Ordered that the time for the plaintiff to file the proposed Bill of Exceptions in this Cause be extended to October 25, 1949.

Entered July 20, 1949. [22]

[Title of District Court and Cause.]

PRAECIPE

To: The Clerk of the District Court, Fourth Division, Territory of Alaska.

You will please prepare a transcript of record of the above entitled cause to be filed in the United States Court of Appeals for the Ninth Circuit, United States of America, setting at San Francisco, California, upon the appeal heretofore perfected in the above entitled cause, including therein the following papers:

1. Complaint with Exhibits
2. Summons and return thereof
3. Demurrer of Defendant filed May 25, 1949
4. Notice of Hearing on said Demurrer
5. Order regarding said Demurrer
6. Petition for Allowance of Appeal
7. Assignment of Errors
8. Notice of Appeal to Ninth Circuit Court of Appeals, United States of America
9. Order Allowing Appeal and Fixing Amount of Appeal Bond
10. Cost Bond on Appeal
11. Citation on Appeal

12. Order Allowing Additional Time for Filing Bill of Exceptions

13. Praecipe [23]

This transcript is to be prepared as required by law and the rules and order of this Court and the Ninth Circuit Court of Appeals, United States of America, and is to be forwarded to the Ninth Circuit Court of Appeals at San Francisco, California, so that it may be docketed on or before the 11th day of August, 1949, pursuant to the Order granting Appeal of the District Court, Fourth Judicial Division, Territory of Alaska, dated the 2nd day of July, 1949.

/s/ ROBERT A. PARRISH,
Attorney for Plaintiff.

Service acknowledged.

[Endorsed]: Filed July 25, 1949. [24]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF THE DISTRICT COURT TO TRANSCRIPT OF RECORD

I, John B. Hall, Clerk of the District Court for the Territory of Alaska, Fourth Judicial Division, do hereby certify that the foregoing, consisting of 24 pages, constitutes a full, true, and correct transcript of the record on appeal in Cause No. 6143, entitled Mike Erceg, Plaintiff, versus United States of America, Defendant, and was made pursuant to

and in accordance with the Praeceptum of the Plaintiff and Appellant, filed in this action, and is the return thereof in accordance therewith, and

I do further certify that the Index thereof, consisting of page "a," is a correct Index of said Transcript of Record, and that the list of attorneys, as shown on page "b", is a correct list of the attorneys of record; also that the cost of preparing said transcript and this certificate, amounting to \$3.20, has been paid to me by counsel for appellant in this action.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court this 27th day of July, 1949.

[Seal] /s/ JOHN B. HALL,
Clerk, District Court, Territory of Alaska, 4th Div.

[Endorsed]: No. 12314. United States Court of Appeals for the Ninth Circuit. Mike Erceg, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court for the Territory District of Alaska, Fourth Division.

Filed August 1, 1949.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

